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IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 281

UNITED STATES OF AMERICA,

Petitioner,

v.

JOSEPH P. RYAN,

Respondent.

ON A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

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Statement

While making no claim that corruption, bribery or extortion was any part of the record of this case, petitioner seeks to cast an aura of secrecy and surreptitiousness around the transactions in question by an overly narrow statement of facts. It was the testimony of the Government's witnesses that the envelopes given to respondent were typed by a company stenographer in an open office and that his was but one of many names on the firm's Christmas list (R. 48-49). The envelopes were given to respondent in his own office in the union headquarters by James C. Kennedy who first announced himself to the union's receptionist and then passed through a public waiting room (R. 67-69).

There was no testimony as to the purpose of the giving of money by Kennedy or its receipt by respondent. No evidence exists as to whether the moneys were personal gifts to respondent destined for his own use or contributions to some cause in which he was interested. The only testimony on this score is Kennedy's flat statement that respondent never solicited or requested anything (R. 60).

On the basis of this record, the trial judge expressly announced that he could see no evidence of corruption (R. 323-326); his decision rested on the theory that the statute was *malum prohibitum*. The Court of Appeals agreed with him that there was no question of corruption involved, but found it unnecessary to consider whether intent or purpose was an element of the crime.

The facts relevant to the decision below and the issue which petitioner seeks to have reviewed here are not disputed; indeed they were stipulated prior to trial. Admittedly the International Longshoremen's Association, a labor organization, was the recognized bargaining representative of longshore employees within the meaning of the National Labor Relations Act. No individual occupied this status at any time. Respondent during the years covered by the indictment was President of the International Longshoremen's Association (R. 20-25). The question sought to be reviewed is whether he was a "representative" of employees within the meaning of Section 302(b) of the Taft-Hartley Act.

Summary of Argument

The petition for a writ of certiorari should be denied as inappropriate and lacking in merit, since the Court of Appeals correctly construed Section 302. The term "representative" in that section is defined in Section 501(3)

of the LMRA in terms of its "meaning when used" in the amended NLRA. As used in the NLRA with reference to a "representative of employees", the word "representative" invariably refers to the exclusive bargaining representative of an appropriate unit of employees and does not cover a union official. The structure of the Taft-Hartley Act and the language and meaning of Section 302 itself further emphasize the correctness of the decision below.

The legislative history confirms that the purpose of Section 302 was not to bar "sell-outs" by faithless union officials but to limit the area of collective bargaining by curbing certain payments on the part of employers to labor organizations, principally in the field of welfare and pension funds. This purpose has been effectuated in practice and is furthered by the decision of the Court of Appeals herein.

The writ should also be denied as inappropriate, since the decision of the Court of Appeals specifically left undecided serious factual, legal and constitutional questions raised by respondent. In the circumstances this Court is being asked to render an opinion which might well be advisory only.

The effect of the Government's contention herein would be to bar all gifts from employers to union officials irrespective of purpose, motive, amount or circumstances. Such a result would have no relationship to the purpose ostensibly attributed to the statute by the Government, that of preventing the betrayal of employees by faithless union officials.

A further result of the Government's broad and sweeping contention herein would be to oust the states com-

pletely from their traditional jurisdiction over extortion by and bribery of union officials or to create a federal crime duplicating a state crime and enabling both federal and state penalties to be imposed for the same act. In addition, adoption of the Government's contention would permit conviction under two federal acts, the Hobbs Act and the Taft-Hartley Act, for precisely the same conduct.

ARGUMENT

POINT I

The petition should be denied because the Court of Appeals correctly held that respondent was not a "representative of employees" within the meaning of Section 302 of the Taft-Hartley Act.

A

The language, structure and purpose of the Taft-Hartley Act compel the construction adopted below.

The opinion of the Court of Appeals presents so soundly and cogently what we believe to be the correct construction of Section 302 that little need be said in addition thereto. As that opinion demonstrates, the word "representative" is defined in Section 501(3) of the Act in terms of its meaning in the amended NLRA. Turning to the NLRA to ascertain the meaning of "representative" with reference to a "representative of any employees" "we discover that there invariably it means a 'representative' selected by a majority of the employees, in an appropriate unit, as their exclusive bargaining representative"

(Opinion below, 11a).[1] The word "invariably" is an apt one; there are no exceptions. Moreover, it is clear that this is the only meaning possessed by the word "representative" with reference to a "representative of employees" and that such a "representative", within the meaning of the amended NLRA and each use of the term therein, cannot and does not cover a union official. In the case at bar the statutory "representative of employees" is the International Longshoremen's Association, not respondent.

One false issue raised in the Government's petition should be disposed of. It is argued that the decision below emasculates the statute "since labor organizations, as legal entities, can only act through their officers or agents" (petition, p. 9). This argument confuses two situations. It has frequently been held that where a statute forbids a corporation or other legal entity to do an act, a corporate officer who causes the organization to violate the statute is himself guilty. And it may well be that if a "representative of employees", in this case the International Longshoremen's Association, had received money from an employer, the officer responsible would be liable under Section 302.

But that is not the situation at bar. Here the statute was intended to cover only a "representative of employees", and unless such a "representative" received money, neither the representative itself nor any of its agents has violated the law. Here there is no evidence, and no contention by the Government, that the moneys allegedly given respondent were received on behalf of the union or were turned over by him to the union treasury.

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[1] Page references to the opinions below refer to the appendix to the petition herein where those opinions are set forth in full.

The result is not that the nature of a labor organization permits evasion of the statutory purpose, but rather that receipt of moneys by a statutory "representative" is the only act intended to be prohibited; such receipt by a union official was never contemplated as being within the statutory scope.

That this construction does not prohibit extortion by and bribery of union leaders is not emasculation of the statute unless it be assumed that such was the statutory aim. When it is seen that Congres in this section was seeking to accomplish an entirely different objective, it is apparent that the statutory purpose has been effectuated and that its potency is not diminished one whit by the decision below.

Nor can it be said that a construction which properly gives effect to the meaning of a statute in accordance with the statutory purpose "unduly narrows" that statute (petition, p. 8), simply because it fails to accomplish an object which the Government deems desirable. "We are not unmindful of the public interests, of the insistent hope and need that the ways of bribers and corruptionists shall be exposed to an indignant world. Commanding as those interests are, they do not supply us with a license to palter with the truth or to twist what has been written in the statutes into something else that we should like to see." Cardozo, *C. J.*, in *Matter of Doyle*, 257 N. Y. 244, 268 (1931). See also *Anderson* v. *Wilson*, 289 U. S. 20, 27 (1933).

The petition herein (p. 10), like the dissenting opinion below, makes much of Section 2(4) of the NLRA which provides that the term representative "includes any individual or labor organization". Obviously not all individuals or labor organizations in this nation are "repre-

sentatives", and the NLRA definition, by using the verb "includes", does not purport to embrace all such persons or bodies within its scope. Nor does Section 501 of the Taft-Hartley Act refer to Section 2 of the NLRA or to any NLRA "definition" of the key term, but rather to the "meaning when used" in the amended NLRA. In the words of the opinion below, "We thereby learn [from Section 2(4)] what 'representative' *includes*. To understand what it *means* . . . we must . . . turn to the many sections of the amended NLRA where 'representative' is so used." (Emphasis supplied.)

An examination of the substantive provisions of the NLRA makes clear that the "individual" referred to in Section 2(4) as a possible "representative" is not a union official but an individual acting as representative of the employees in a unit in lieu of a labor organization. Thus Section 8(d) of the NLRA provides:

> "The duties imposed upon employers, employees, and labor organizations by paragraphs (2), (3) and (4) of this subsection shall become inapplicable upon an intervening certification of the Board, under which the *labor organization or individual*, which is a party to the contract, has been superseded as or ceased to be the *representative* of the employees . . ." (Emphasis supplied.)

And Section 9(c)(1) provides:

> "Whenever a petition shall have been filed in accordance with such regulations as may be prescribed by the Board—
>
> (A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of em-

> ployees (i) wish to be represented for collective bargaining and that their employer declines to recognize their *representative* as the *representative* defined in subsection (a) of this section, or (ii) assert that the *individual or labor organization*, which has been certified or is being currently recognized by their employer as the bargaining *representative*, is no longer a *representative* as defined in subsection (a) of this section; or
>
> (B) by an employer, alleging that one or more *individuals or labor organizations* have presented to him a claim to be recognized as the *representative* defined in subsection (a) of this section; . . ." (Emphasis supplied.)

The Government in effect concedes that each and every time the word "representative" is used in the NLRA with reference to a "representative of employees", it has the meaning contended for by us; therefore we have not analyzed individually the various uses of that term.[2] Petitioner argues, however, that this is not because of the

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[2] The principal ground of the dissent below—never raised by the Government in either the trial court or the Court of Appeals and not urged by it herein—is that the definition of "labor organization" in the NLRA is sufficiently broad to include an individual. While we believe this view to be answered completely by the majority below (12a-13a), we fail to see its relevance even if its correctness be assumed *arguendo*. For the key term to be construed is "representative" not "labor organization," and it does not advance the argument to claim that an individual may be a "representative" by being a labor organization. He may be a "representative" directly, without involved reasoning, by the simple, clear provisions of Section 2(4) of the NLRA and the substantive provisions of that Act. The question is whether this language refers to a union officer or to an individual acting as "representative" in lieu of a labor organization, and on this score the dissent furnishes no support to petitioner. We think it clear from a reading of the statute that the latter is the correct construction.

meaning of the term but because it is always modified by "limiting" phrases such as "for the purpose of collective bargaining" or "as provided in section 9(a)". The short answer to this contention was given by the Court of Appeals: "That is not true" (12a); and the opinion goes on to cite several sections in which the word is not so modified and yet unquestionably refers only to the statutorily created exclusive bargaining representative.[3]

Petitioner relies heavily on uses of the word "representative" outside of the NLRA and in a context other than "representative of employees," the only type of "representative" referred to in Section 302 (petition, pp. 13-14). The Government fails to note that under the Taft-Hartley Act, as under the original Wagner Act, "representatives of employees" are unique. Nothing in this law or any other purports to tell employers, the public, business, industry or finance (to take petitioner's own examples) how they shall choose their representatives in their economic dealings with others; nowhere are these other groups combined by law into appropriate units with elaborate mechanics prescribed for the election of "representatives" under Government auspices; and with the "representative" chosen by the majority being the exclusive "representative," for the minority who would have preferred another as well as for the majority.

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[3] In several instances the phrases relating to "representative" in the amended NLRA were intended as phrases of limitation, but not at all in the sense urged by petitioner herein. Under the scheme of the NLRA a "representative of employees" may become such in two ways: through voluntary recognition or through certification by the NLRB. As this Court pointed out in *American Communications Association* v. *Douds*, 339 U. S. 382 (1950), several provisions of the NLRA distinguish between certified and recognized representative in the rights conferred and liabilities imposed. Some of the phrases relied upon by petitioner were intended to make the provision in question applicable only to certified representatives. Section 302 is applicable to both certified and recognized representatives.

And yet this is precisely what the Act does in the case of employees, and only employees. To argue, therefore, that the word "representative" when used with reference to employers, the public, or other groups in the community does not have the meaning for which we contend is to miss the entire point of the Act and what it accomplishes. Whatever may be the meaning of the word with reference to these other groups, Section 302 deals only with a "representative of employees" and here the meaning is clear, precise and uniform throughout the statute. It does not cover a union official when the union itself is the employee representative.

Indeed, we fail to see how the single word "representative" could be construed to cover both the union and its various officials, to say nothing of other unspecified categories of persons, as contended by petitioner. The union and its officials are entirely separate, both practically and juridically. The union, when acting as statutory "representative", is the agency directly responsible to the employees and subject to their control through the provisions of the amended National Labor Relations Act. The officers are the agents of the union, appointed or elected, with no necessary direct responsibility or accountability to the employees. One acts as the principal, the other as an agent. Their respective rights, powers, duties and obligations differ completely. Each is specifically referred to and separately described in the LMRA. Thus, the union is described by a specific term, "labor organization", its officers are referred to in the statute as "officers" [NLRA Sec. 9(h)] or "agents" [NLRA Sec. 8(b), LMRA Sec. 301(b)] and when it is desired to extend the statutory coverage to both the union and its officials, the clear phrase "a labor organization or its agents" is used [NLRA Sec. 8(b)]. A single word, "representative",

undefined except in terms of its NLRA meaning, cannot conceivably be held to encompass both types of entity, and the statute makes no attempt to do so.

Turning now to Section 302 itself, that section supports fully the statutory construction of the Court of Appeals. At the outset Congress prohibited *all* receipts of money by an employee representative from an employer. The intent was to bar all payments to a union treasury unless made in accordance with the exceptions enumerated and under the specific conditions there set forth. Through this section Congress sought to eliminate the growing practice of employee representatives in using their tremendous bargaining power to force employers to make huge payments to them, usually for welfare or pension funds. These funds, however, were administered solely by the union with little or no restriction, and Congress feared that, rather than being expended for the benefit of the employees who earned them, they were being accumulated as union "slush funds" or "war chests." While Congress at the time had in mind principally welfare and pension funds, and primarily those of the United Mine Workers, the section was designed to limit the area of collective bargaining by prohibiting all such payments in whatever form. Thus, for example, a guaranteed annual wage fund could not be established, in the light of Section 302, by employer payments to the employees' representative and the establishment of a fund held and administered solely by that representative.[4]

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[4] This does not mean that we contend, as the dissenting judge below erroneously thought, that Section 302 "covers no payments but those made in the course of negotiation and to a bargaining agent of the union for the union" (20a). The section prohibits payments to a true statutory "representative" whenever made, and whatever the circumstances (subject to the five exceptions and to the word "wilfully" in so far as criminal liability is concerned).

After prescribing the general prohibition Congress then set forth the exceptions, and the only exceptions, to that prohibition. Since "representatives of employees" could be either labor organizations or individuals (see cases cited by Court of Appeals majority at 11a), Congress had to set forth all exceptions which it thought appropriate to make available to either type of representative or both. As the opinion below demonstrates, and as petitioner concedes, most of these apply solely to representatives which are labor organizations, one or two apply to both types, and the remaining one or two apply only to those representatives who are individuals. If the exceptions relating to individuals had been omitted, employees could not select as their representative a fellow employee in their own appropriate bargaining unit, and hence the full, unlimited freedom in the choice of representatives, intended to be conferred by the NLRA, would by this Section be denied. Nothing in the Section's structure or language, however, lends support to petitioner's contention that the exception applicable to an individual refers to an individual labor leader rather than an individual who is an "employee representative" in the statutory sense.

Not only is Section 302 consistent with the construction of the statute adopted by the Court of Appeals, it compels that construction. For sub-section (c)(5) thereof, the most important exception, refers to a "trust fund established by such representative," that is the representative whose receipt of money is prohibited in sub-section (b). It is common knowledge that employees' trust funds are not established by union leaders but by the union itself, together with the employers, and that union officials are not even parties to such indentures. This was proven as a factual matter in the instant case with respect to the

longshore industry, and the relevant welfare and pension agreements were introduced in evidence (R. 106-112).

Petitioner is in error when it asserts (Petition, p. 11) that Section 302 (c)(5) uses the term "representative of employees" in relation to the administrators of the trust fund. Here, as everywhere else in the Act, the key phrase refers to the bargaining representative in the statutory sense.

A reading of the statutory language in question, Section 302 (c)(5)(B) discloses that this provision refers throughout, except in one clause, not to the day-by-day administration of the trust fund by the trustees, but to the initial agreement between the employer and the bargaining representative establishing such fund. This applies to the optional designation of neutral persons, to the requirement that "such agreement provides" for an impartial umpire or the appointment of an umpire by the district court, and to the requirement that such agreement "shall also contain provisions for an annual audit".

Only at one point is reference made in Section 302 (c)(5)(B) to the administration of the fund by the trustees. And there the term used to describe such administrators appointed by the union and the employers is not "representative" but "employer and employee groups". Hence the word "representative" is given its true and consistent statutory meaning and the union-appointed trustees are described by another term entirely, "employee group".

B

The legislative history of Section 302 supports the construction adopted by the Court of Appeals and refutes that advanced by petitioner.

Petitioner asserts that "The majority opinion below relies heavily upon the legislative history of Section 302" (petition, p. 15). This is inaccurate; the opinion below rests on the statute itself. What the majority did say, after first concluding from an analysis of the statute that the conviction must be reversed, was this: "The government makes much of the legislative history. But, so far as it illuminates, it tends strongly to support defendant's contention" (13a).

As the opinion below convincingly demonstrates, the legislative history of Section 302 makes it amply clear that at the time of the enactment of the statute, the only time that counts, no Congressional purpose existed to prohibit payments to union officers or agents. Practically all the Committee reports and Congressional debates concerning Section 302, running into the hundreds of pages, are devoted to a consideration of union welfare funds, whether or not they should be regulated, and if so, the standards to be applied. This applies to the Taft-Hartley bill itself and to the Case bill, considered in the previous session of Congress, which contained a similar proposal. Throughout the Congressional debates and the Committee reports, the section is referred to as a provision for the regulation of welfare funds. To a much lesser extent there is evidenced a Congressional desire to limit check-off payments to labor organizations. In these two

purposes lies Congressional intent, not in any supposed prohibition of "pay-offs" to union officers.

The history of the separate definition of "representative" originally made a part of Section 302, its deletion by the Joint Conference Committee, and the inclusion by that Committee of the word "representative" in Section 501(3) as among those defined in terms of its NLRA meaning are all chronicled so completely by the Court of Appeals that repetition here would serve no purpose. Also set forth are the expressions of Congressional intent with respect to Section 302 and the reasons for the changes made therein by the Joint Conference Committee. Many more references to the Congressional Record might be cited to support the clear statement of purpose made by Senator Ball, sponsor of the section, and quoted in the majority opinion below at 18a. *E. g.*, 92 Cong. Rec. 4891 (Byrd) 4893 (Byrd) 4894 (Byrd), 5340 (Taft), 5345 (Ball), 5428 (Taft) (1946); 93 Cong. Rec. 4678 (Byrd), 4678 (Ball), 4746-7 (Taft), 5015 (Ball) A2252 (Ball) (1947).

The significant thing about the debates on both the Byrd Amendment and Section 302 as introduced by Senator Ball is not the meaning ascribed to the word "representative" in that proposal—since the ultimate use of that term in the LMRA differed completely in both language and context from its Byrd Amendment meaning—but the fact that the key differences between the separate definition of "representative" contained in the Byrd Amendment and the NLRA meaning of the same word did not go unrecognized. For example, Senator Wayne Morse strenuously objected to the separate definition of "representative" originally contained in Section 302, pointing out its variance from the NLRA meaning of the term and the consequences of this new definition

to the NLRA concept of a single, exclusive employee representative. 92 Cong. Rec. 5474 (1946). From these remarks, three things are plain: first, that Senator Morse recognized the obvious fact that the word "representative" in the NLRA meant the exclusive representative chosen as such by a majority of employees in a unit; second, that he thought there were grave dangers in having the Byrd Amendment meaning of that term vary from that of the NLRA; and third, that he understood that if the meaning of "representative" in the Byrd Amendment were brought into conformity with the meaning in the NLRA, then the applicability of that term would be restricted to the exclusive majority representative of a bargaining unit in the same sense that the word is used throughout the NLRA. This he apparently thought to be desirable, and this is what was eventually done in the Taft-Hartley law.

Senator Ball, too, when he first introduced Section 302 as an amendment to the Taft-Hartley bill, took pains to point out that the meaning of "representative" in his proposal differed from that in the NLRA. (See Court of Appeals majority opinion at 15a.)

In view of these facts it is apparent that any statement made by any Senator in the course of debate has no bearing on the resolution of the issue at bar. For however similar the remainder of Section 302 of the law may be to Section 302 of the bill debated by the Senate, the meaning and definition of the word "representative" was most definitely changed prior to passage of the Act. There were no relevant debates on Section 302 after the Conference Committee reported, and under no circumstances can a statement concerning the bill before the Senate made prior to the Conference Report be used to

provide the meaning of that word in the final Act of Congress.

The petition herein (pp. 17-20) argues that the definition of "representative" was originally inserted in the Byrd Amendment in an effort to narrow the scope of the word, and several quotations are set forth from Senatorial remarks prior to the inclusion of this definition. It is important to realize, however, that the Byrd Amendment and the Case bill as a whole were not intended to tie in closely with the National Labor Relations Act or to constitute a revision of that Act as was the Taft-Hartley law. The Case bill was entitled the "Federal Mediation Act of 1946" and none of its terms including "representative" in the Byrd Amendment, was ever defined in terms of its NLRA meaning. Hence it would by no means follow, even absent the special definition of "representative" in the Byrd Amendment, that the meaning of that word in the Case bill would be the same as in the National Labor Relations Act.

And even if it be assumed *arguendo* that the definition of "representative" was added to the Byrd Amendment in order to narrow scope and thus set at rest the fears of some Senators, petitioner is not aided thereby. What the Government overlooks is that the elimination of this definition from the Taft-Hartley bill by the Joint Conference Committee did not leave the term wholly undefined as it was in the Byrd Amendment as originally introduced. For this excision was accompanied by the insertion of "representative" in Section 501(3) as one of the terms defined by its NLRA meaning. In other words, if Senator Byrd inserted the definition of "representative" in his Amendment to allay fears and narrow the statutory scope, so the Conference Committee for the Taft-Hartley bill substituted for this definition the still

narrower meaning given the term in the NLRA, and for exactly the same reason. (See, for example, the reference in the Court of Appeals opinion at 15a to fears expressed by Senator Ives, who voted against the proposed Section 302, who was a member of the Joint Conference Committee, and who subsequently voted for the bill.)

Reference is made on pages 15 and [illegible] of the petition to a House proposal making it an unfair labor practice for an employer to bribe a union officer (H. R. 3020, 80th Cong., 1st Sess.), and an attempt is made to link this provision with Section 302. To consider fully the meaning, history and implications of this House proposal would unduly lengthen this brief, but the following summary observations should be made.

In the first place the House provision is not any part of the history of Section 302 and has no relation to the meaning and purpose of that Section. On its face, it clearly applies only to employers, it creates an unfair labor practice not a crime, and it specifically requires an intent to influence conduct. With respect to the issue at bar, the term used to describe the recipient of the bribe is not "representative of employees" but something entirely different. And most significantly of all, the purpose was not to protect the union or its members from faithless officials but to narrow the scope of the broad "company union" prohibition in the NLRA (thereby aiding employers, not employees) through an enumeration of the only types of conduct which would allow the NLRB to brand a union as company-dominated. House Rep. No. 245 on H. R. 3020, 80th Cong., 1st Sess.; House Conf. Rep. No. 510 on H. R. 3020, 80th Cong., 1st Sess.

The Government's misplaced reliance on this House proposal illustrates the essential fallacy of its entire

view of Section 302. Petitioner would read Section 302 as though it were designed to strengthen the bargaining power of unions by punishing faithless employees and preventing "sell-outs" to employers; looking at the other side of the coin, employers, under the Government's interpretation, would be curbed in their use of economic power to render unions subservient to them in their mutual dealings.

As the dissent below points out and as the government urges herein, this is a laudable aim with which few will disagree.[5] The only difficulty is that it was not the aim of Congress which was dealing with another subject matter entirely.[6] This will be clear upon a moment's reflec-

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[5] It should be added, however, that the section, as interpreted by the Government, goes far beyond this, with consequences the desirability of which would be questioned by many. Had Congress really been seeking to accomplish the aim attributed to it by petitioner, it would have used far more appropriate language, similar to that in the abandoned House proposal considered above. As to the suggestion (petition, p. 21) that a *malum prohibitum* provision was adopted because of supposed difficulties of proof, there is absolutely no evidence of this in legislative history, and questions of proof no more difficult and almost identical in nature are regularly prescribed in federal and state statutes with no apparent inability to convict.

[6] The petition's footnote reference (p. 21) to the report of the New York State Crime Commission, in which the transactions alleged in this indictment were first considered by a government agency, is to be deplored. That report came many years after the enactment of Taft-Hartley and is wholly irrelevant to its history or meaning. Nor is there any other evidence of Congressional fear that union bargaining power was being impaired by employer bribes or gifts. In view of the admitted absence of corruption, evil purpose or the like in this record, we protest petitioner's effort to drag this issue in by the back door through references to the proceedings of the New York State Crime Commission which, in the words of the experienced District Attorney of New York County, Hon. Frank S. Hogan, were based on "triple-plated hearsay," which gave no opportunity for cross-examination, and which were devoid of all protections commonly afforded the individual under Anglo-Saxon jurisprudence.

tion as to the ultimate purpose of the Taft-Hartley law and the philosophy underlying it. The whole purpose of Taft-Hartley was to correct an imbalance thought to exist between the economic power of labor and management and the restrictions placed upon the two groups by law. The Wagner Act had proceeded on the assumption that the superior economic power of management was thwarting the legitimate aspirations of employees, and therefore that Act conferred certain rights upon employees and their representatives while curbing some of the types of conduct theretofore engaged in by employers. No correlative restrictions were placed upon unions. By 1947 Congress felt that the pendulum had swung the other way, that the unrestricted economic power of unions now had to be curbed, and that the restrictions on employers should be loosened to enable them to compete with their employees' representatives on more even terms. [See, e. g., the "free speech" amendment to the NLRA, Sec. 8(c).]

Obviously the construction of Section 302 adopted by the Court below furthers the paramount purpose of Congress. And just as obviously the Government's contention is wholly inconsistent with that purpose. The intent attributed to the 1947 Congress by petitioner might have been appropriate if directed toward the legislature which adopted the Wagner Act. But it misconceives entirely the approach, philosophy and objectives of the Taft-Hartley Congress and would have the 1947 legislators seeking to further an end—the strengthening of the bargaining power of unions—which it was their express desire to discourage.

Petitioner's charge that the decision below has "emasculated" Section 302 (petition, pp. 8-9, 22) is not only inaccurate as a matter of construction but as a practical

matter as well. Because of the enactment of Section 302 in its present form, welfare funds and check-offs have been regulated in the manner desired by Congress. All such funds in industries affecting interstate commerce are in trust, reduced to a written agreement and administered jointly by employers and unions. The rights of the individual workers are specifically protected by the trust indenture. This has been done even in industries with the most powerful unions, including the United Mine Workers, the particular object of this provision. See *Van Horn* v. *Lewis*, 79 F. Supp. 541 (D. C. Dist. 1948). Similarly check-offs are no longer in effect in industries affecting interstate commerce except upon written permission of the employee affected, and then only for the period of time prescribed by the statute. The purposes of Section 302 have been fully accomplished.

It is true now, as it was in 1947, that the welfare funds which Congress sought to regulate result from direct payments by employers to labor organizations. They were then frequently used by these unions for general welfare purposes without being in trust and without any real limitation on their expenditure. It was felt by many that they were too often used as a "war chest" for union ends rather than the benefit of the workers, and also that discrimination was practised among the workers in allocating their distribution. See 93 Cong. Rec. 4746-7 (Taft) (1947).

These welfare funds, however, were never paid to union officers but only to the union itself and then only when the union was the "representative of employees" within the meaning of the NLRA. That this was recognized by Congress appears clearly from the legislative record. For example, in the Supplemental Report by five members of the Senate Labor Committee in which Section 302 was first considered (Senate Report No. 105, on S. 1126,

Supplemental Views, 80th Cong., 1st Sess., p. 52), the following appears:

> "The necessity for the amendment was made clear by the demand made last year on the part of the Union Mine Workers that a tax of 10 cents a ton on coal be paid to the *Mine Workers Union* for indiscriminate use for so-called welfare purposes." (Emphasis supplied.)

The only sense in which Section 302 was intended to curb the power of labor leaders was through the prohibition of the unrestricted receipt by unions of these moneys. In other words, John L. Lewis and other union officials were to be affected, not directly as payees, recipients, or donees of any moneys or things of value, but indirectly as agents or officers of labor organizations which were themselves such payees. If the money could not be received by the union without the presence of safeguards, then obviously the union officers could not permit it to be spent except in accordance with those same safeguards. The unrestricted payments were thus to be cut off at the source.

But this scheme and purpose was in no wise affected by the action of the Joint Conference Committee in narrowing the meaning of "representative" or by the holding of the Court of Appeals herein. Since union officers were themselves never directly payees or recipients of welfare or check-off funds, there was no loss to the statutory effectiveness in eliminating them from any coverage that may have existed under the original proposal. And since the true statutory representatives are still covered, the payments sought to be curbed and eliminated at their source have been so curbed. The basic purpose of Section 302 has been upheld; no prohibition on legitimate matters has

been imposed; serious constitutional questions have been eliminated; and the term "representative" has been given a uniform and effective meaning throughout the entire Act.

POINT II

The petition for a writ of certiorari should be denied because of the nature of the questions decided and those left undecided by the Court of Appeals, the broad statutory scope necessarily contended for by petitioner herein, and the effect of the Government's contentions upon both the federal-state relationship and the federal criminal law.

While the Taft-Hartley Act itself, viewed as a thing apart, fully sustains the decision below, an examination of that law as a part of our legal system furnishes further compelling reasons for denial of the writ. So too do the nature of this case, its factual background, the legal contentions raised in the Court of Appeals and the disposition made by that Court of those contentions. We shall now deal briefly with these factors, with the scope of the Government's argument herein and with the consequences of its adoption both to the federal criminal law and to the federal-state relationship in the field of criminal jurisdiction.

A

The inappropriateness of certiorari in the instant case.

At the very outset of the majority opinion in the Court of Appeals, Judge Frank states that the record herein is

barren of any evidence of extortion or the like. As the opinion goes on to note, respondent contended that Section 302, through inclusion of the word "wilfully" in paragraph (d) thereof, required as an element of the crime a corrupt or evil purpose or intent within the doctrine laid down by this Court in the case of *Morissette* v. *United States*, 342 U. S. 246 (1952). Conceding that no evidence of corruption, bribery, extortion, evil purpose or the like exists in the case at bar, the Government has taken the position throughout that Section 302 is purely *malum prohibitum* in nature and the word "wilfully" has no relation to any intent or purpose on the part of a defendant.

Respondent has further contended that even under the Government's interpretation of the words "representative" and "wilfully", the evidence was insufficient to warrant his conviction in that it failed to establish knowledge on his part of the identity of the alleged donor of moneys or the fact that such donor was an employer of longshore labor.

And finally, respondent has contended that Section 302 as construed by the Government is unconstitutional on grounds of vagueness and that it is beyond the power of Congress to enact, there being no requirement of any relationship between a defendant's status as a "representative of employees" in interstate commerce and the receipt by him of money or other thing of value.[7]

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[7] *United States* v. *Connelly*, 129 F. Supp. 786 (D. Minn.) cited in a footnote at p. 10 of the petition involved only a constitutional attack on the statute by way of motion to dismiss and did not deal at all with the question decided by the Court of Appeals herein. The *Connelly* decision, moreover, was predicated largely on the District Court decision in this case which had not yet been reversed.

The Court of Appeals found it unnecessary "to consider either of those contentions, since we rest our decision on another ground" (9a).

After considering the statutory interpretation advanced by the Government, the Court said: "If, however, we accepted that interpretation, we would have to consider defendant's argument noted in point I of this opinion" (footnote 4, 10a). This Court is asked to review and can only review the single issue adjudicated by the Court of Appeals. Were it to reverse on that issue, the case would then have to be remanded for a decision by the Court of Appeals on the other factual, statutory and constitutional issues raised by respondent, particularly as to the meaning of the word "wilfully" in the light of the *Morissette* and similar decisions.

We submit that a record of this type is inappropriate for the grant of a writ of certiorari apart from the merits of the issue sought to be reviewed. This Court should not be asked to render its opinion in a case presenting other factual and legal questions, not passed upon by the Court of Appeals, under circumstances which might well render any opinion by this Court a mere advisory expression of views having no ultimate effect upon the final determination of the cause.

B

The scope of the Government's contention.

As indicated above, it is the Government's contention that Section 302 of the Taft-Hartley Act is a *malum prohibitum* provision making criminal the mere receipt of moneys by a "representative of employees" irrespec-

tive of motive, purpose or intent. It should therefore be recognized that the petition's fine-sounding phrases—"betraying the trust of the employees", "faithless and venal representatives", and the like—are all beside the point. So too are the quoted legislative references to "bribes" and "extortion". If these quotations and references have any meaning, they establish the correctness of respondent's contention that "wilfully", as used in this statute requires evil or corrupt intent, since only when such factors are present can the interest of employees be betrayed. And although, as we have shown above, prohibition of bribery and extortion was not in fact the legislative purpose behind the enactment of Section 302, if this is to be the intent attributed to Congress then the reversal of the conviction must stand on the basis of the insufficiency of evidence, whatever may be the meaning of the word "representative".

The Government's contention, in sum, goes far beyond the confinements of an anti bribery or anti-extortion statute designed to prevent faithless and venal conduct. Under its interpretation Section 302 would apply, for example, to the receipt of a charitable or religious contribution by a "representative of employees" from an employer or the acceptance of a political contribution by such a representative. It would apply to a turkey on Thanksgiving, candy on other festive occasions, or flowers sent to an invalid official at a hospital. Since intent to influence or be influenced in conduct is irrelevant to the Government's claim, the amount or value of the gift is irrelevant as are the circumstances of its making.

Consequences would necessarily follow from the broad scope which petitioner seeks to give the word "representative" and the *malum prohibitum* construction advanced by it, which Congress could not have intended and

did not, as a matter of record, intend. Such consequences have no relation to insuring the faithful performance of duties by union officials or the prohibition of "sellouts" to employers; a statute directed to this end would have been drafted far differently from Section 302.

C

The grave consequences of the Government's statutory contention to the federal criminal law, the federal-state relationship, and the rights of individual citizens.

The Government rightly points out in its petition (p. 22) that this is "a field largely preempted by federal legislation". See *Garner v. Teamsters*, 346 U. S. 485 (1953). And as we have shown above, the Government views Section 302 as a sweeping enactment barring all receipts of money by union officials from employers, irrespective of circumstance, purpose or intent, unless they fall within one of the five exceptions set forth in Section 302(c). This interpretation not only gives rise to grave constitutional questions but presents insuperable state-federal problems in the crucial area of criminal law enforcement.

For if Section 302 of the Taft-Hartley Law is interpreted as applying to union officials, then the states have been ousted completely from their traditional jurisdiction over extortion and bribery on the part of any such official. The Taft-Hartley Law, so interpreted, would be broad enough to cover these traditional state crimes and hence would serve to exclude the states entirely from this field. An intent to accomplish such a drastic result is not lightly to be attributed to Congress.

Nor can this problem be solved by assuming that the federal law does not oust the states of jurisdiction and that the states may act concurrently with the federal Government in prosecuting extortion by and bribery of union officials. Such a holding would only raise another serious problem, that of former jeopardy. Where state and federal governments have each enacted criminal statutes making the same act an offense under the laws of each, conviction or acquittal under state law does not bar a later federal prosecution. *Hebert* v. *Louisiana*, 272 U. S. 312 (1926); *United States* v. *Lanza*, 260 U. S. 377 (1922).

Under such circumstances, a defendant may not only be put in jeopardy twice, but may actually be punished twice, for the same act. But although the federal law does not provide that such double prosecution and punishment constitutes "former jeopardy" in the technical sense, because of the rule that in such a case two offenses have been committed, one under state and one under federal law, this Court has recognized that the mere possibility of such double prosecution is abhorrent to our sense of justice. Accordingly, the presence of that possibility has been used as the basis for the strict construction of federal statutes creating "offenses which duplicate or build upon state law". *Jerome* v. *United States*, 318 U. S. 101, 105 (1943).

The statutory interpretation advanced by petitioner would not only create chaos and confusion in the field of federal-state relations, it would create equally serious problems with respect to the federal penal law itself. For if the statute involved herein covers all receipts of money by a union official from an employer, other than those falling within the specific exceptions in Section 302, a substantial area of overlapping exists between this section

and the Hobbs "Anti Racketeering Act", 18 U. S. C. Section 1951.

Virtually all violations of the Hobbs Act by a union official or anyone else construed to be a "representative of employees" would, under the Government's theory herein, constitute in and of themselves violations of Section 302 of the Taft-Hartley Law. The exact same act would constitute two separate, substantive federal crimes, each punishable by fine and imprisonment. Conviction or acquittal upon the same evidence under either statute would not bar subsequent prosecution and punishment under the other. Section 302 should not be construed so as to give rise to such a monstrous possibility.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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